

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of YVONNE GRAY and U.S. POSTAL SERVICE,
POST OFFICE, Philadelphia, PA

*Docket No. 03-1136; Submitted on the Record;
Issued September 23, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly found that the evidence established that appellant's employment-related disability had ceased.

On January 1, 1999 appellant, then a 44-year-old casual mail handler, filed a traumatic injury claim alleging that, on December 26, 1998, she injured her left wrist when she grabbed a heavy mail sack. On April 16, 1999 the Office accepted that appellant sustained a left wrist sprain in the performance of duty and the claim was later expanded to include left radial nerve syndrome. Appellant returned to work for four hours per day with no use of her left hand or wrist. She missed intermittent time from work and filed several claims for wage-loss compensation (Form CA-7). Appellant was terminated as a casual employee on July 14, 1999 due to no work availability.

Appellant filed a claim alleging a recurrence of disability on June 30, 1999. She claimed that after she returned to limited-duty work for four hours per day her condition worsened and she continued to seek medical treatment.¹

Dr. Steven J. Valentino, an orthopedic and reconstructive spine surgeon, stated, in a July 8, 1999 report, that appellant still had left wrist pain and diagnosed radial nerve syndrome. In an August 5, 1999 attending physician's report, he checked "yes" that appellant's condition was caused or aggravated by an employment activity. On August 26, 1999 he stated that appellant's left wrist injury had resolved.

In a report dated January 17, 2000, Dr. Scott M. Fried, an orthopedic hand surgeon, stated that appellant was having significant upper extremity problems dating back to December 26, 1998. In a January 28, 2000 attending physician's report, he diagnosed "traction injury radial nerve left arm and wrist" and checked "yes" that appellant's condition was caused or aggravated

¹ The Office did not issue a decision on the recurrence issue.

by an employment activity. In a report dated April 26, 2000, Dr. Fried stated that appellant's "major issue" was a work-related traction injury to her brachial plexus secondary to the throwing of a mail sack and noted that she had been symptomatic since that time.

On June 30, 2000 the Office referred appellant to a second opinion physician and Board-certified orthopedic surgeon, Dr. Richard J. Mandel, to determine whether appellant had any residuals from the work-related injury. He examined appellant and opined that there were no objective abnormalities to confirm the presence of any ongoing work-related injury. Dr. Mandel stated specifically that there was no evidence of any ongoing wrist sprain or radial neuropathy and that appellant was capable of returning to regular-duty work without restrictions.

On April 4, 2001 the Office issued a notice of proposed termination of compensation on the grounds that the weight of the medical evidence indicated that appellant had recovered from her work injury.

In a report dated May 18, 2001, Dr. Fried stated:

"[Appellant] has shown improvement with respect to her work[-]related injury to her left upper extremity but she has not shown this to be resolved. She in fact does have substantial residual and permanent ongoing disability on the left. [Appellant] has not resolved her work incident and remains partially disabled secondary to the same."

On October 15, 2001 the Office referred appellant, the case record and a statement of accepted facts to a Board-certified orthopedic surgeon, Dr. John S. Taras, for an independent medical examination to resolve the conflict in medical opinion between Drs. Mandel and Fried.

In a report dated November 29, 2001, Dr. Taras described his examination of appellant and stated that she had a nonphysiological weakness pattern on the left, but that she had full range of motion in her wrist, elbow and shoulder. He stated:

"The impression at this time is subjective left upper extremity pain. By objective standards, [appellant] has a normal examination. Her subjective responses do not support an ongoing work injury or a pathologic condition in her arm. [Appellant's] nonphysiological responses to pain with palpation and with Tinel's testing do not support a pathology in the arm as being responsible for this reported pain. Within a reasonable degree of medical certainty, I feel confident stating that [appellant] is not suffering from an ongoing work injury. Whatever her issues with regard to reporting pain in the upper extremity, I am confident that they were not caused by the duties required by a mail handler."

On January 2, 2002 the Office issued a second notice of proposed termination of compensation on the grounds that the weight of the medical evidence established that appellant had no residuals from the work-related injury. By decision dated February 12, 2002, the Office terminated appellant's compensation benefits effective March 24, 2002.

Appellant disagreed with the Office's decision and requested an oral hearing. At the hearing held on October 23, 2002, appellant alleged that Dr. Taras' report was insufficient to

carry the weight of the medical evidence since he did not acknowledge that appellant had loss of grip strength in the left arm or the circumference of her left wrist and did not explain how he arrived at his conclusions.

Appellant submitted additional medical reports from Dr. Fried dated August 31, 2001, March 4 and October 9, 2002. In the October 9, 2002 report, Dr. Fried stated that appellant continued to have pain in both hands, neck and discomfort in both legs. He stated that appellant was taking pain medication for her symptoms and diagnosed traction injury radial nerve left forearm and wrist from throwing of a mailbag on December 26, 1998, traction injury median nerve secondary to same, de Quervain's tenosynovitis with possible crossover syndrome left wrist and forearm, lateral epicondylitis left, probable radicular component with disc space narrowing at C5-6 and C6-7 levels and electromyogram positive brachial plexopathy left upper 53, lower 52, right upper 50.

By decision dated January 10, 2003, the Office hearing representative affirmed the February 12, 2002 decision on the grounds that Dr. Taras' opinion as an independent medical specialist represented the weight of the medical evidence.

The Board finds that the Office properly found that appellant's employment-related disability had ceased.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation benefits without establishing that the disability has ceased or that it is no longer related to the employment.³ Further, the right to medical benefits, for an accepted condition, is not limited to the period of entitlement to compensation for wage loss.⁴ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition that require further medical treatment.⁵

In this case, the Office accepted appellant's claim for a left wrist sprain and left radial nerve syndrome. Dr. Fried opined that appellant continued to suffer residuals due to the December 26, 1998 work injury. On the other hand, Dr. Mandel, the second opinion physician, indicated that there was no evidence of any ongoing wrist sprain or radial neuropathy.

Section 8123(a) of the Federal Employees' Compensation Act provides: "[i]f there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an

² *Harold S. McGough*, 36 ECAB 332 (1984).

³ *Vivien L. Minor*, 37 ECAB 541 (1986).

⁴ *Marlene G. Owens*, 39 ECAB 1320 (1988).

⁵ *Calvin S. Mays*, 39 ECAB 993 (1988).

examination.”⁶ Because of the conflict in medical opinion evidence between Drs. Fried and Mandel, the Office referred appellant to an impartial medical examiner.

In his November 29, 2001 report, Dr. Taras provided an accurate history of injury and prior medical treatment and summarized his findings on examination. He diagnosed subjective left upper extremity pain and supported his findings with medical rationale, noting that by objective standards, appellant had a normal examination and that her subjective responses did not support an ongoing work injury or a pathologic condition in her arm. Dr. Taras stated that her nonphysiological responses to pain with palpation and with Tinel’s testing did not support a pathology in the arm as being responsible for the reported pain. He concluded that appellant was not suffering from a work-related injury and that her pain in the upper extremity could not be attributed to her duties as a mail handler.

In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical examiner for the purpose of resolving the conflict, the opinion of such examiner, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷ As Dr. Taras’ report was sufficiently rationalized and was based on a complete factual and medical background, it represents the weight of the medical evidence and establishes that appellant’s work-related residuals had ceased. It also establishes that appellant’s continuing left arm pain was not due to employment factors.

After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability which continued after termination of compensation benefits.⁸

In this case, appellant’s compensation benefits were terminated effective March 24, 2002; therefore, appellant must submit medical evidence showing she still suffered from employment-related residuals after that date. The only report dated after March 24, 2002 is Dr. Fried’s October 9, 2002 report; however, it is insufficient to overcome the weight of the medical evidence which continues to rest with independent medical specialist Dr. Taras.

Dr. Fried stated in his report that appellant was still having pain in her hands and neck, the left side being worse than the right; however, he did not address the cause of these symptoms or relate them to appellant’s work injuries. He also did not state anywhere in his report that appellant was totally disabled or that her disability was the result of her work-related injuries. Dr. Fried actually indicated that appellant still had “considerable” physical limitations, meaning that appellant was still able to perform some type of work and was not totally disabled. He did mention that appellant suffered a traction injury of the radial nerve in the left forearm and wrist

⁶ 5 U.S.C. § 8123(a).

⁷ *Jack R. Smith*, 41 ECAB 691, 701 (1990); *James P. Roberts*, 31 ECAB 1010, 1021 (1980).

⁸ *Talmdge Miller*, 47 ECAB 673, 679 (1996).

while throwing a mailbag on December 26, 1998; however, this was only mentioned under his diagnoses and he did not relate appellant's current condition in any way to the work-related incident. Last, he mentioned appellant's "current exacerbation" but did not expand on his statement or relate it in any way to the original work injuries. Dr. Fried's report is of little probative value as it does not contain a rationalized medical opinion on the cause of appellant's current condition or relate it to the accepted work injuries. It is, therefore, insufficient to outweigh the well-rationalized opinion of Dr. Taras. Dr. Fried's report is also insufficient to overcome the weight accorded to Dr. Taras' report or to create a new conflict with it, as Dr. Fried was on one side of the conflict that Dr. Taras was selected to resolve.⁹

Consequently, Dr. Taras' report remained the weight of the medical opinion evidence in this case and established that appellant had no continuing disability after March 24, 2002, causally related to her December 26, 1998 accepted employment injury.

Accordingly, the January 10, 2003 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
September 23, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

⁹ *Harrison Combs, Jr.*, 45 ECAB 716 (1994).